REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

THE ABBAS'ORCHARD SCHOOL, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8377

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 04 2014
2:25 p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review filed on November 14, 2011, pursuant to Section 7(a)(1)[1] of Republic Act ("RA") No. 1125,[2] as amended by RA No. 9282[3] and RA No. 9503,[4] seeks for the Court to:[5]

a. Declare that obtaining a confirmatory ruling/certificate of exemption is not and cannot be legally

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[1] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
[2] An Act Creating the Court of Tax Appeals, as amended.
[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.
[4] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.
[5] *Records*, pp. 1-64, with Annexes.

considered a condition precedent to entitlement to the income tax exemption under 1987 Constitution and Tax Code;

b. Declare The Abbas' Orchard School, Inc. ("TAOSI") exempt from the payment of income taxes as a non-stock, non-profit educational institution; and

c. Order the cancellation and withdrawal of the subject deficiency income tax assessment for the taxable year 2008 in the amount of Php2,169,430.30, inclusive of interests, surcharges and penalties.

THE PARTIES[6]

Petitioner TAOSI is a non-stock non-profit corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal address at Alwana Business Park, Caguman, Cagayan de Oro City, where it may be served with orders, notices, resolutions and other processes. It is engaged in the operation of schools which offers formal academic instructions to the following levels: Pre-school, Elementary and High School in the different parts of the Philippines, particularly Cagayan de Oro City, Bukidnon, Davao, and Metro Manila.[7]

On the other hand, respondent Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), vested with the authority to act as such, including the power to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction. Respondent holds office at the BIR National Office Building, Diliman, Quezon City where she can be served with summons, notices, and other legal processes.

FACTS OF THE CASE

On January 31, 2011, the Bureau of Internal Revenue ("BIR") issued a Preliminary Assessment Notice ("PAN") against petitioner for

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[6] *Records*, pp. 1-2.
[7] *Id.*, p. 27, *Annex* "A."

deficiency income tax and expanded withholding tax ("EWT") in the amount of Php2,062,676.98 and Php113,912.15, respectively, inclusive of surcharges, interest and compromise penalties, for the taxable year 2008.[8]

On February 14, 2011, petitioner filed a protest letter in response to the PAN,[9] stating that it is a non-stock non-profit educational institution, therefore exempt from the payment of tax on income solely derived from its school related activities. Petitioner further explains that the alleged failure to withhold the necessary taxes from services were payments from professional fees made in favor of a general professional partnership, which is considered exempt from EWT.[10]

On July 29, 2011, the BIR issued a Formal Letter of Demand reiterating its demand on the payment of the said taxes, but in an increase amount of Php2,169,430.38 and Php98,176.15, representing deficiency on income tax and EWT, inclusive of surcharges, interest and compromise penalties.[11]

In response thereto, on August 9, 2011, petitioner filed its protest[12] and specifically states that it already paid the amount of Php98,176.15 for the EWT.[13]

On September 1, 2011, the BIR issued her Final Decision on Disputed Assessment ("FDDA") assessing petitioner for deficiency income tax in the amount of Php2,169,430.39.[14]

Having received the FDDA on October 14, 2011, petitioner filed this Petition for Review on November 14, 2011.

In her Answer,[15] respondent interposed the following special and affirmative defenses:

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[8] *Records*, p. 523, *Exhibit* "E."
[9] *Id.*, pp. 527-530, *Exhibit* "F."
[10] *Id.*, p. 527, *Exhibit* "F."
[11] *Id.*, p. 531, *Exhibit* "G."
[12] *Id.*, pp. 537-540, *Exhibit* "H."
[13] *Id.*, p. 537, *Exhibit* "H."
[14] *Id.*, p. 541, *Exhibit* "I."
[15] *Id.*, pp. 75-82.

"4. Petitioner The Abbas Orchard School Inc. is liable to pay its deficiency income tax assessment in the total amount of Two Million, One Hundred Sixty Nine Thousand, Four Hundred Thirty and 39/100 (P2,169,430.39) as the said assessment was issued in accordance with law and jurisprudence.

5. Comprehensive study disclosed that petitioner is liable to pay the total deficiency income tax assessment.

A non-stock, non-profit educational institution is governed by Section 4(3), Article XIV of the 1987 Philippine Constitution, which provides:

> 'All revenues and assets of non-stock, non-profit educational institutions used **actually, directly and exclusively** for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.'

While Article 8 Section 17 of the 1973 Philippine Constitution provides:

(3) Charitable institutions, churches, personages or convents appurtenant thereto, mosques and non-profit cemeteries, and all lands, buildings and improvements **actually, directly, and exclusively** used for religious or charitable purposes shall be exempt from taxation.

The foregoing provisions are revisions of Article VI Section 22 of the 1935 Philippine Constitution which reads:

(3) Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

Evidently, under the 1935 Constitution, all lands, buildings and improvements are only required to be used **exclusively** for educational purpose to be exempt from taxation. Yet, with the advent of the 1973 and 1987 Philippine Constitution, the words '**actually and directly**' are included in the provision. 'Exclusive' is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and 'exclusivity' is defined, 'in a manner to exclude; as enjoying a privilege exclusively.' 'Actual is defined as existing in fact; real. While 'direct is defined as straight; undeviating, free from extraneous influence, immediately. Hence, actual, direct, and exclusive use means real, immediate and sole application of the lands, building and improvement to the purpose for which the educational institution is established.

The intendment of the Constitutional framers to prevent evasion and deviation from the strict letter of the law is plainly apparent. The exemption granted to the non-stock non-profit institution is not automatically and necessarily granted owing to the 'Lifeblood Doctrine.' Clear and convincing evidence must be presented to show that indeed the '**lands, buildings and improvements are ACTUALLY, DIRECTLY AND EXCLUSIVELY used for educational purposes**.' Distinctly, the Constitution does not undertake to exempt all income of the institution from taxability; the qualification of the phrase 'actually, directly and exclusively,' is of utmost importance. It cannot be simply ignored. Petitioner cannot just rely and cloak itself with the Constitutional grant without showing proof of its entitlement thereto. Time and again, the basic rule remains --- Taxation is the rule; Exemption is the exception. Accordingly, statutes granting tax exemptioins must be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority. To him, thereofe, who claims a refund or exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. **(Commissioner of Internal Revenue vs. PLDT, G.R. No. 140230, December 2005)**

In the instant case, petitioner failed to present proof of exemption, one of which is the Certificate of Tax Exemption pursuant to Revenue Memorandum Circular

No. 14-2001. This prompted respondent to subject it to 10% income tax in accordance with Section 27(B) of the National Internal Revenue Code of 1997 which provides:

> '**SECTION 27. Rates of Income Tax on Domestic Corporations.** —
>
> *xxx*
>
> *(B) Proprietary Education Institutions and Hospitals. — Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: Provided, that if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term 'unrelated trade, business or other activity' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. A 'proprietary educational institution' is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports (DECS), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.'*

6. In the case of **De La Salle University vs Commissioner of Internal Revenue (C.T.A. EB No. 671 (C.T.A. Case No. 7303), June 08, 2011**) the Honorable Court citing the case of ***Commissioner of Internal Revenue vs. Court of Appeals, et al., 298 SCRA 97,*** laid down the requirements for an educational institution to

be entitled to the exemption in the afore-cited constitutional provision, to wit:

1) it falls under the classification of non-stock, non-profit educational institution; and

2) the income it seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes.

Whether the income of petitioner was used actually, directly, and exclusively for educational purposes remains to be proven by such quantum of proof required in the courts of law.

7. Taxes are essential to government's very existence; (CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003) hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. (CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008) Tax exemptions are to be construed *strictissimi juris* against the person or entity claiming the exemption. (Philippine Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005)

A tax exemption cannot arise from vague inference. Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. **(City of Iloilo vs. Smart, G.R.No. 167260, February 2009)**

It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications. **(Antam Pawnshop vs CIR G.R. No. 167962 September 2008)**

> 8. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is prima facie valied and lawful where it does not appear to have been arrived at arbitrarily or capriciously. (**Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997**)
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> 9. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right . Otherwise the presumption of correctness of tax assessment stands (**Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005**)
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> 10. Petitioner has not pointed out any provision or item in the assessment notice which bears a trace of falsity. Its averments were based on conjectures, surmises and speculations. These cannot supply the basis for the charge of impropriety in the assessments made.

A pre-trial conference[16] was set. Both parties filed their respective briefs.

On March 29, 2012, petitioner filed its "Motion for Summary Judgment,[17]" while respondent filed her "Comment (Re: Petitioner's Motion for Summary Judgment),[18]" on April 13, 2012. Considering that there are genuine issues that need to be resolved, the Court issued a Resolution[19] denying the "Motion for Summary Judgment."

On September 7, 2012, the parties submitted their Joint Stipulation of Facts and Issues.[20]

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[16] *Records*, p. 86.
[17] *Id.*, pp. 159-173.
[18] *Id.*, pp. 186-196.
[19] *Id.*, pp. 217-221.
[20] *Id.*, pp. 293-296.

On March 19, 2013, petitioner filed its "Formal Offer of Exhibits."[21] While, respondent filed her Formal Offer of Evidence by registered mail on July 29, 2013.[22]

On November 14, 2013,[23] the Court resolved to submit the case for decision, taking into consideration the "Memorandum for Petitioner,"[24] filed on October 17, 2013, and the "Respondent's Memorandum,"[25] filed on November 12, 2013.

Hence, this Decision.

ISSUE

As stipulated upon by the parties in the Joint Stipulation of Facts and Issues ("JSFI") dated September 7, 2012, the issues[26] for the Court's consideration are:

> 1. WHEHTER TAOSI IS LIABLE FOR THE DEFICIENCY INCOME TAX ASSESSMENT IN THE AMOUNT OF Php2,169,430.39 INCLUSIVE OF INTERESTS, PENALTIES AND SURCHARGES FOR THE TAXABLE YEAR 2008;
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> 2. WHETHER OR NOT TAOSI FALLS UNDER THE CLASSIFICATION OF NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION;
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> 3. WHETHER OR NOT THE BIR MADE ANY FINDING IN ITS FINAL DECISION ON DISPUTED ASSESSMENT THAT TAOSI's INCOME OR ANY PART THEREOF WAS NOT ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR EDUCATIONAL PURPOSES;
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> 4. WHETHER OR NOT TAOSI'S INCOME SOUGHT TO BE EXEMPTED FROM TAXATION IS

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[21] *Id.*, pp. 484-496.
[22] *Id.*, pp. 754-757.
[23] *Id.*, p. 818.
[24] *Id.*, pp. 775-800.
[25] *Id.*, pp. 805-814.
[26] *Id.*, pp. 294-295.

ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR EDUCATIONAL PURPOSES; and

5. WHETHER OR NOT A CERTIFICATE OF EXEMPTIOIN FROM THE BIR IS A CONDITION PRECEDENT TO THE ENJOYMENT/ENTITLEMENT OF THE INCOME TAX EXEMPTION GUARANTEED BY SECTION 4, ARTICLE XIV OF THE 1987 CONSTITUTION AND SECTION 30(H) OF THE NATIONAL INTERNEAL REVENUE CODE OF 1997.

RULING OF THE COURT

The issues presented before Us can be summed up to as follows:

1. Whether TAOSI should be exempted from the payment of deficiency income tax in the amount of Php2,169,430.39 inclusive of interests, penalties and surcharges for the taxable year 2008 for being a non-stock, non-profit educational institution as ascribed in Section 30(H) of the 1997 National Internal Revenue Code, as amended ("NIRC); and

2. Whether or not a Certificate of Exemption from the BIR is a condition precedent to the enjoyment/entitlement of the income tax exemption guaranteed by Section 4, Article XIV of the 1987 Constitution and Section 30(H) of the NIRC.

Petitioner's Arguments:

Petitioner alleges that it is a non-stock non-profit educational institution therefore it is exempt from the payment of income tax as ascribed in Section 30(H) of the NIRC. Furthermore, it contends that a certificate of exemption from the BIR is not required in order to be entitled for exemption from the payment of income tax. Also, it alleges that it already paid the deficiency EWT.

Respondent's Counter-argument:

Respondent avers that petitioner is a proprietary educational institution and therefore its income is subject to ten percent (10%) tax prescribed in Section 27(B) of the NIRC. Likewise, she alleges that petitioner failed to substantiate its claim that its income were actually, directly, and exclusively used for educational purposes as it was conducting other activities for profit. Furthermore, it failed to present its Certificate of Tax Exemption as provided in Revenue Memorandum Circular No. 14-2001.

In the resolution of the case, the second issue shall first be resolved as it involves a purely legal question of whether or not a certificate of exemption is a condition precedent in order for petitioner to be entitled to income tax exemption as prescribed in Revenue Memorandum Order No. 20-2013.[27]

In Section 30(H) of the NIRC, provides the following:

> SECTION 30. *Exemptions from Tax on Corporations.* - The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> xxx xxx xxx
>
> (H) A nonstock and nonprofit educational institution;
>
> xxx xxx xxx
>
> Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

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[27] Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock. Non-Profit Corporations and Associations Under Section 30 of the National Internal Revenue Code of 1997, as Amended, July 22, 2013.

In the case of *Republic of the Philippines vs. Sunlife Assurance Co. of Canada*,[28] the Supreme Court held that when the Tax Code does not provide for a requirement to be exempt, the BIR cannot add an additional requirement to implement the law, to wit:

> "*First,* the Tax Code does not require registration with the CDA. No tax provision requires a mutual life insurance company to register with that agency in order to enjoy exemption from both percentage and documentary stamp taxes.
>
> A provision of Section 8 of Revenue Memorandum Circular (RMC) No. 48-91 requires the submission of the Certificate of Registration with the CDA, before the issuance of a tax exemption certificate. That provision cannot prevail over the clear absence of an equivalent requirement under the Tax Code. *One,* as we will explain below, the Circular does not apply to respondent, but only to cooperatives that need to be registered under the Cooperative Code. *Two,* it is a mere issuance directing all internal revenue officers to publicize a new tax legislation. Although the Circular does not derogate from their authority to implement the law, it cannot add a registration requirement, when there is none under the law to begin with."

Thus, from the foregoing, in order for petitioner to be exempt from income tax, it must show that it is a non-stock, non-profit educational institution and that no part of its income is derived from activities conducted for profit.

The requirement for certificate of exemption prescribed in RMO No. 20-2013 is not a requirement stated by the said law. Therefore, the certificate of exemption is not a condition precedent for petitioner to be entitled to income tax exemption.

[28] G.R. No. 158085, October 14, 2005, 473 SCRA 129.

Having settled the aforesaid issue on the issuance of certificate of exemption, we now proceed to determine petitioner's entitlement to income tax exemption.

Relevant provisions are Section 4(3) of Article XIV of the 1987 Constitution and Section 30(H) of the NIRC, to wit:

> "Article XIV
> Education
>
> Section 4.
>
> xxx xxx xxx
>
> 3. All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.
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> Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions, subject to the limitations provided by law, including restrictions on dividends and provisions for reinvestment.
>
> xxx xxx xxx
>
> SECTION 30. *Exemptions from Tax on Corporations*. - The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> xxx xxx xxx
>
> (H) A nonstock and nonprofit educational institution;
>
> xxx xxx xxx
>
> Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character

of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code."

In the case of *Commissioner of Internal Revenue v. Court of Appeals, et al.*,[29] the Supreme Court sums up the requirements for an educational institution to be entitled to income tax exemption, as follows:

1) That it falls under the classification non-stock, non-profit educational institution; and

2) That its income it seeks for tax exemption is used actually, directly, and exclusively for educational purposes.

Sections 77 and 78 of the Corporation Code of the Philippines[30] provide for the definition of a non-stock corporation, to wit:

> "***Sec. 87. Definition.*** - For the purposes of this Code, a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers, subject to the provisions of this Code on dissolution: Provided, That any profit which a non-stock corporation may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.
>
> The provisions governing stock corporation, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title.
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> **Sec. 88. *Purposes.*** - Non-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social,

[29] G.R. No. 124043, October 14, 1998, 298 SCRA 83.
[30] Commercial Laws of the Philippines, compiled by AFA Editorial Staff, Aguedo F. Agbayani, 2002 Revised Edition.

civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations." (Emphasis Supplied).

While the consolidated case of *Commissioner of Internal Revenue vs. St. Lukes Medical Center, Inc., and St. Lukes Medical Center, Inc. vs. Commissioner of Internal Revenue*,[31] provides for the definition of non-profit to mean as follows:

> "Non -profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.

Whereas an educational institution within the purview of Section 4(3) of Article XIV refers to schools which are duly established institutions of learning or educational institutions.[32]

In the present case, there is no dispute that petitioner by reason of its organization, is a non-stock, non-profit educational institution as shown by its Articles of Incorporation,[33] Amended Articles of Incorporation,[34] and By-laws.[35]

However, this does not automatically exempt petitioner from income taxes. To be exempt from income tax, petitioner must show that it complied with Section 4(3), of Article XIV of the 1987 Constitution which requires that its income has been utilized actually, directly, and exclusively for educational purposes; and Section 30 last paragraph which requires that no part of its income has been derived from activities conducted for profit.

To substantiate its claim, petitioner presented the following documents:

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[31] G.R. Nos. 195909 and 195960, September 26, 2012.
[32] Batas Pambansa 232 (Section 26), September 11, 1982.
[33] *Records*, pp. 500-501.
[34] *Id.*, pp. 502-507.
[35] *BIR Records*, pp. 337-341.

1. TAOSI's audited financial statements for the year 2008[36]
2. Annual Income Tax Return (BIR Form No. 1702) for 2008[37]
3. Judicial Affidavit of Gideon A. De Leon (In Lieu of Direct Examination)[38]
4. Judicial Affidavit of Ms. Eve Sherlyn P. Dychauco (In Lieu of Direct Examination)[39]

In the Audited Financial Statements, the Balance Sheet,[40] Statement of Activities,[41] Statement of Changes in Fund Balance,[42] Statement of Cash Flows,[43] provided by petitioner, it does not fully support petitioner's allegations. The Judicial Affidavits of Mr. Gideon A. De Leon,[44] who is the Independent Certified Public Accountant ("ICPA"), and Ms. Eve Sherlyn Dychauco,[45] who is the Chief Accountant of petitioner, are self-serving considering that its report are under their control and it can be contrived easily, especially considering that there are no other supporting evidence substantial enough for the Court to verify whether the income was utilized actually, directly, and exclusively for educational purposes or its income has been derived from non-profit activities.

In the same vein, the Court has ruled in among its cases that "it is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it."[46]

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36 *Exhibit* "B."
37 *Exhibit* "J.
38 *Exhibit* "L."
39 *Exhibit* "X."
40 *Records*, p. 510.
41 *Id.*, 511.
42 *Id.*, p. 512.
43 *Id.*, p. 513.
44 *Exhibit* "L."
45 *Exhibit* "X."
46 *Stateland, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8457, November 28, 2013.

Considering that there are no other documents presented for the Court to audit and evaluate its claim, the assessment is therefore upheld.

Respondent assessed petitioner in the total amount of Php2,169,430.38 broken down as follows:

TAX	BASIC	SURCHARGE	INTEREST	COMPROMISE	**TOTAL**
Income Tax	1,249,182.75	312,295.69	582,951.95	25,000	2,169,430.38

However, the Court does not agree with the imposition of the compromise penalty as "the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying it or not paying it distinctly belongs to the taxpayer. Absent any showing that petitioner consented to the compromise penalty, the same should not be imposed, otherwise, its imposition is illegal and unauthorized. Therefore, since there is no showing that petitioner conformed to the imposition of the compromise penalty, the compromise penalty is cancelled."[47]

On the other hand, the imposition of interest is now re-computed and adjusted to conform to Section 249 (B) and (C) of the NIRC.

WHEREFORE, premises considered, the assessment issued by respondent against petitioner covering deficiency income tax for the taxable year 2008 is hereby **AFFIRMED** with **MODIFICATION**. The compromise penalty in the amount of Php25,000.00 is hereby **CANCELLED**. Accordingly, petitioner is **ORDERED to PAY** respondent the amount of Php1,249,182.75 representing deficiency income tax for the taxable year 2008, plus surcharge of 25% imposed under Section 248(3) of the NIRC, computed as follows:

Basic Deficiency Income Tax	1,249,182.75
Add: 25% Surcharge	312,295.69
Total Amount Due	1,561,478.44

[47] *Sarangani Resources Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8105, November 8, 2013.

Likewise, petitioner is **ORDERED** to **PAY** (a) deficiency interest at the rate of 20% per annum on the basic deficiency income tax of Php1,249,182.75 computed from April 15, 2009 until full payment thereof pursuant to Section 249(B) of the NIRC; and (b) delinquency interest at the rate of twenty percent 20% per annum on the total amount of Php1,561,478.44 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from September 20, 2011[48] until full payment thereof pursuant to Section 249(C) of the NIRC.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[48] *BIR Records*, p. 409.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice